

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

WILLIE C. SIMPSON,

Plaintiff,

v.

DALIA SULIENE and LORI ALSUM,

Defendants.

ORDER

08-cv-054-bbc

Plaintiff complains in this lawsuit that defendants Dalia Suliene and Lori Alsum are denying him treatment for pancytopenia. He has asked for and been granted an enlargement of time to July 9, 2008, in which to file a motion for a preliminary injunction with respect to this claim. Now, however, plaintiff has filed documents titled "Motion to Remove Defense Counsel and Enquiry for Conflict of Interest" (Dkt. #38) and "Court Correspondence to Hon. Judge Barbara B. Crabb in this Case Requesting a Protective Order" (Dkt. #42). (In addition, on June 10, 2008, plaintiff filed a motion to compel discovery from the defendants (Dkt. #43) and a motion for a protective order relating to his medical records (Dkt. #44), which will be taken under advisement after passage of the 5-day time period within which defendants have to respond.)

In support of his motion to remove the attorney general and his subordinates from

representing the defendants in this case, plaintiff argues that the attorney general has a duty under 18 U.S.C. § 242 to prosecute the defendants in this case for their alleged criminal behavior in failing to attend to his serious medical needs and that their defense of defendants in this lawsuit creates a conflict of interest. Plaintiff is mistaken.

As I told plaintiff in an order dated June 2, 2008, denying his motion “to hold defendants criminally liable” for their alleged unconstitutional acts, the question whether to prosecute individuals for criminal behavior rests entirely within the discretion of the Attorney General of the state in which an alleged violation of state law has occurred, and the United States Attorney General or United States Attorney for the district in which an alleged violation of federal law has occurred. In this lawsuit, plaintiff is alleging that defendants are violating federal law. If any sort of criminal action is to be brought against defendants for their alleged violation of plaintiff’s constitutional rights, it would not be the state attorney general or his subordinates who would bring the action. It would be federal prosecutors. Therefore, plaintiff cannot prevail on his argument that the state attorney general and his subordinates should be removed as defense counsel in this case. The state has no duty under 28 U.S.C. § 242 to prosecute defendants criminally for their acts in this case. Thus their representation of defendants in the defense of this action does not create a conflict of interest.

In support of his motion “. . . to Hon. Judge Barbara B. Crabb. . . Requesting a Protective Order,” plaintiff complains that defendant Suliene is retaliating against him

because he filed this lawsuit against her. He asks that I enter an order restraining defendant “and her subordinates” from retaliating against him and directing that he be treated by another doctor.

The question whether defendant Suliene is retaliating against plaintiff because he filed this lawsuit is not a matter properly raised in the context of this lawsuit. If plaintiff believes that defendant Suliene is violating his constitutional rights in ways other than denying him treatment for pancytopenia, he will have to raise the claim in a separate lawsuit after he exhausts his administrative remedies with respect to that claim.

ORDER

IT IS ORDERED that plaintiff’s “Motion to Remove Defense Counsel and Enquiry for Conflict of Interest” (Dkt. #38) and his “Court Correspondence to Hon. Judge Barbara B. Crabb in this Case Requesting a Protective Order” (Dkt. #42) are DENIED.

Entered this 11th day of June, 2008.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge